Missouri Public Service Commission

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May 16, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RE: Docket No. 96-98; In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996

Dear Secretary:

Enclosed are an original and seventeen (17) copies of **COMMENTS OF THE MISSOURI PUBLIC SERVICE COMMISSION** for filing in the above-referenced matter.

Please file stamp the extra copy for return to our office. Thank you for your attention to this matter.

Sincerely,

Eric B. Witte
Assistant General Counsel
573-751-4140

EBW/bsl
Enclosures

No. of Copies rec'd 0+7
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
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COMMENTS OF THE MISSOURI PUBLIC SERVICE COMMISSION

CONTENTS

In its **Notice of Proposed Rulemaking** (hereinafter "NPRM") adopted and released April 19, 1996, the Federal Communications Commission ("the FCC") seeks comments regarding its mandate to establish new procedures to implement the interconnection provisions of the Telecommunications Act of 1996 ("the 1996 Act"). The Missouri Public Service Commission ("the MoPSC") submits the following comments regarding some of the issues raised in the NPRM:

Summary

I. State and Federal Jurisdiction

A. The MoPSC supports federal minimum standards for:

1) unbundling;

2) number portability; and,

3) number administration.

B. The MoPSC is willing to work with the FCC to assure uniformity and consistency regarding:

1) provisioning intervals;

2) interconnection "technical feasibility" standards;

3) interconnection terms and conditions;

4) resale terms and conditions; and,

5) arbitration procedures.

II. Section 251 Topics in General: Except where Congress expressly allocated jurisdiction to the FCC, jurisdiction over § 251 matters remains with the states.

III. Pricing of Interconnection, Collocation, and Unbundled Network Elements

A. The states retain jurisdiction over pricing, for both legal and policy reasons.

B. The fact that Congress required unbundled elements to have "just, reasonable and nondiscriminatory" prices did not bestow jurisdiction on the FCC.

IV. Jurisdictional Separations

A. The FCC should not reconsider separations at this time.

B. If the FCC decides to reconsider separations, it should do so in the context of the Joint Board in CC Docket 80-286.

V. National Pricing and Costing Procedures

A. The FCC should refrain from establishing national pricing and costing procedures.

B. As a matter of policy, the MoPSC favors using a long-run incremental cost method.

VI. Collocation: The MoPSC offers its proposed collocation rule for consideration.

VII. Arbitration: The MoPSC has extensive experience in arbitration, so federal constraints are inappropriate.

VIII. Good Faith: To the extent that the FCC adopts standards for good faith negotiations, the FCC should judge parties by their objective conduct, not their subjective state of mind.

I. State and Federal Jurisdiction

By passing the 1996 Act, Congress intended to promote competition in all aspects of the telecommunications industry: local, state, national and international. To that end, it has given the FCC fairly detailed direction as to what it must do to accomplish this goal.

It is the position of the MoPSC that the FCC should promulgate rules that foster a climate of competition without hindering or impeding the progress that has already been made. The FCC rules should promote cooperation between the FCC and the states, where appropriate, and reflect the differences in each state's geography, economy and population. Such goal-oriented rules could permit state regulators to continue to dealwith their constituencies on an informal basis and to adapt to changes in the telecommunications environment.

The NPRM's preemptive tone causes concern at the MoPSC. While preemption promotes uniformity and predictability, and tends to diminish the force of parochial concerns, it also fails to reflect differences among the states, among companies within states, and among exchanges within companies. In addition, a policy of requiring all states to implement new interconnection rules tends to punish pioneering states that have already incurred the cost and trouble of adopting their own interconnection rules.

The NPRM's prescriptive nature also causes concern at the MoPSC. The sheer volume of the FCC's rules will form an intimidating and impenetrable barrier to entry for all but the largest and most sophisticated competitors. This is the antithesis of Congress' intent in passing the 1996 Act, and presumably the antithesis of the FCC's intent as well.

Nevertheless, the MoPSC supports federal minimum standards for:

1) number portability (¶ 198-99);

2) unbundling (¶ 77); and,

3) number administration (¶ 250).

However, even where the FCC has the authority to preempt the states, it should exercise its authority by the least restrictive means possible.[1] Note, for example, that:

> [i]n prescribing and enforcing regulations to implement the requirements of [§ 251], the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--
>
> (A) establishes access and interconnection obligations of local exchange carriers;
>
> (B) is consistent with the requirements of this section; and
>
> (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

47 U.S.C. § 251(d)(3).

Other procedures and standards are, and properly should be, left for the states to determine. For example, the FCC acknowledges that "state commissions are uniquely positioned to understand, judge and determine how new area codes can best be implemented in view of local circumstances." NPRM at ¶ 256. Even though the FCC lacks authority to preempt the states on many matters, the MoPSC is willing to work with the FCC to assure uniformity and consistency between the federal and state jurisdictions on the following matters:

1) provisioning intervals (¶ 79);

2) interconnection "technical feasibility" standards (¶ 57);

3) interconnection terms and conditions (¶¶ 21, 49-50, 55, 61-62, 117, 155, 170, 269);

4) resale terms and conditions (¶¶ 117, 155, 172-75, 196-97, 269); and,

5) arbitration procedures (¶ 219).

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[1] *National Ass'n of Reg. Util. Comm'rs v. FCC*, 880 F.2d 422, 430 (D.C. Cir. 1989) ("the Commission may take appropriate [preemptive] measures in pursuit of [its] goal, but *only* to the degree necessary to achieve it."); *Public Util. Comm'n of Texas v. FCC*, 886 F.2d 1325, 1333 (D.C. Cir. 1989) (FCC must limit regulation of telecommunications equipment to interstate aspects, where possible.)

II. Section 251 Topics in General

Certain aspects of telecommunications are regulated by the states; certain aspects are regulated by the FCC. 47 U.S.C. § 152(b).

Section 251 lists a number of topics related to interconnection. Before the 1996 Act, these topics were within the states' jurisdiction. In the 1996 Act, Congress delegated certain aspects of these topics to the FCC's jurisdiction. For example, Congress gave the FCC jurisdiction over:

1) the determination of the access elements that must be unbundled to permit competition;[2]

2) number portability;[3] and,

3) number administration.[4]

---

[2]47 U.S.C. § 251(c)(3) requires incumbent LECs to provide unbundled access to "network elements." In addition, § 251(d)(2) provides that:

> *In determining what network elements should be made available for purposes of section (c)(3), the Commission shall consider*, at a minimum, whether--
>
> (A) access to such network elements as are proprietary in nature is necessary; and
>
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(emphasis added).

[3]47 U.S.C. § 251(b)(2) provides that:

> Each local exchange carrier has the following duties:
>
> * * *
>
> (2) NUMBER PORTABILITY -- The duty to provide, to the extent technically feasible, number portability *in accordance with requirements prescribed by the Commission.*

(emphasis added.)

[4]47 U.S.C. § 251(e) provides that:

(e) NUMBERING ADMINISTRATION --

Except where Congress specifically allocated jurisdiction to the FCC, jurisdiction over § 251 remains with the states. The FCC's assertion to the contrary does not conform to the 1996 Act. When the FCC asserts jurisdiction over every topic in § 251, it renders meaningless the express language giving FCC jurisdiction over specific topics. Courts construe statutes in a manner that gives meaning to all provisions.[5]

III. Pricing of Interconnection, Collocation, and Unbundled Network Elements

The FCC tentatively concludes that it has the authority to adopt pricing rules for interconnection, unbundled network elements and collocation; to define "wholesale rates" for the purposes of resale; and to determine the definition of "reciprocal compensation agreements" for transport and termination of telecommunications. The MoPSC strongly disagrees with this conclusion. Congress did not alter or repeal § 152(b) of the Communications Act of 1934, as amended, which states that "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to [intrastate services]." The provision of local exchange service is clearly an intrastate activity, and therefore falls solely within the jurisdiction of the

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> (1) *COMMISSION AUTHORITY AND JURISDICTION -- The Commission shall create or designate one or more impartial entities* to administer telecommunications numbering and to make such numbers available on an equitable basis....
>
> (2) COSTS -- The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis *as determined by the Commission.*

(emphasis added).

[5]*See American Textile Mfrs. Institute Inc. v Donovan*, 452 U.S. 490, 513, 101 S.Ct. 2478, 2492-93, 69 L.Ed.2d 185 (1981) and cases cited therein.

states. The states are in a superior position to know the companies, markets and unique circumstances inside their borders, and therefore, are better able to set pricing rules that will ensure just, reasonable and nondiscriminatory pricing, to define "wholesale rates" and to decide upon "reciprocal compensation arrangements."

The FCC errs when it asserts jurisdiction over establishing the price of each unbundled element of access. The FCC argues that it must have jurisdiction in order to effectuate Congress' mandate that the established prices be "just, reasonable and nondiscriminatory." NPRM at ¶ 117 (citing 47 U.S.C. § 251(c)(2), (3), (6)). However, the fact that Congress establishes a standard does not, by itself, bestow jurisdiction on a federal agency. Virtually every state has experience in establishing just, reasonable and nondiscriminatory rates, and any party that disputes a state's conclusions may seek a review in federal court. The FCC's assistance in this matter is unnecessary and unwarranted.

The MoPSC is especially adamant in its opposition to the FCC establishing pricing principles that blur the distinctions between intra- and interstate costs, as proposed in the NPRM at ¶ 120. This proposal has insurmountable problems. Legally, so long as 47 U.S.C. § 152(b) remains in effect, the distinctions between intra- and interstate costs remain relevant. *Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 370, 106 S.Ct. 1890, 1899, 90 L.Ed.2d 369 (1986). Practically, if the FCC establishes principles setting prices based on both intra- and interstate costs, it would be unclear what revenues the states would be responsible for collecting when establishing rates.

IV. Jurisdictional Separations

The FCC raises the issues of jurisdictional separations at least twice in its NPRM. At ¶ 3, footnote 7, the FCC announces its intention to initiate a comprehensive review of its existing jurisdictional separations rules. Additionally, at ¶ 120 the FCC states, "we tentatively conclude that the pricing principles we establish pursuant to section 251(d) would not recognize any jurisdictional distinctions, but would be based on some measure of unseparated costs." The FCC seeks comments on these proposals.

The FCC jurisdictional separations procedures have delineated state and federal responsibilities for telecommunications for many years. Regulators use the information derived through this process in many different ways, both interstate (*e.g.*, for the allocation of costs between interstate and intrastate facilities) and intrastate (*e.g.*, for settlements among local exchange companies). This is not the appropriate time to change or eliminate these procedures. Until competition fully develops, the utilities and the regulators will need the information provided by this process to accurately distinguish between state and interstate costs and responsibilities.

The MoPSC sees no need to review the existing jurisdictional separations rules in this docket. The FCC has a large number of issues on which it *must* act in the next few months, so its efforts should be concentrated on those issues requiring immediate attention. However, should the FCC initiate an inquiry, the vehicle for such a review exists in the form of the Joint Board in CC Docket 80-286, which was established to deal with separations matters that affect both the federal and state jurisdictions.

The FCC's jurisdictional separations procedures should be followed in the implementation of the sections of the 1996 Act which are the subject of this NPRM. Without the separations process, there is no clear definition of joint and common costs.

V. National Pricing and Costing Procedures

The NPRM indicates that the FCC intends to develop national pricing and costing procedures. NPRM at ¶¶ 117-120. Constitutionally, pricing cannot be determined without considering cost;[6] costs clearly vary from state to state. The desire to set one costing procedure, and the possibility of one maximum and/or one minimum price, are the antithesis of introducing effective and vigorous competition into the many different and distinct areas of the nation.

Maximum flexibility must be left to the individual states to address the many unique situations faced across the nation. Through the complex process of rate design, state commissions set all of a utility's regulated prices simultaneously in order to help the regulated utility recover its revenue requirement. No nation-wide pricing method could possibly reflect the complexity needed to guide ratemaking. States are better able to determine particular costing and pricing

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[6]The U.S. Supreme Court has declared that:

> ...the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business.... See State of Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Commission, 262 U.S. 276, 291, 43 S.Ct. 544, 547, 67 L.Ed. 981, 31 A.L.R. 807 (Mr. Justice Brandeis concurring).

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603, 64 S.Ct. 281, 288, 88 L.Ed. 333 (1944).

needs relative to their own individual costs. The 1996 Act already provides the necessary guidelines and standards to ensure competitive forces have the opportunity to develop throughout the country. Additional standards from the FCC are not necessary to accomplish the desired result. The FCC must, in the final analysis, refrain from dictating the minute details of the competitive future.

The several costing methods such as long-run incremental cost ("LRIC") and total service LRIC ("TSLRIC") are presented for comment. NPRM at ¶¶ 123-133. These and alternate costing methods exist and may be used for various reasons and in different circumstances. The MoPSC supports the use of a LRIC for costing because this method includes appropriate attributable joint and common costs, those identifiable with a service. Pending Missouri state legislation contains an appropriate definition of LRIC

> [T]he change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology, and excluding any costs that, in the long run, are not brought into existence as a direct result of the increment of output. The relevant increment of output shall be the level of output necessary to satisfy total current demand levels for the service in question, or, for new services, demand levels that can be demonstrably anticipated[.]

S.B. 507, 88th General Assembly, 2d Sess., § 386.020(33) RSMo (1996). Other states, such as Texas, have adopted a similar or identical definition. TEX. REV. CIV. STAT. ANN. Art. 1446 c-0, §3. States should retain the flexibility to adopt the costing standards appropriate to their needs.

Proxy or surrogate costing methods have shown themselves inconsistent and incapable of mirroring known costs, much less serving as a substitute for an actual cost study. Such models, including the benchmark costing model, should not substitute for actual costing procedures.

VI. Collocation

On November 14, 1989, Metropolitan Fiber Systems ("MFS") filed a petition for Rulemaking with the FCC asking it to establish rules to govern the physical interconnection of facilities for competitive carriers providing local access services in interstate communications. Specifically, MFS asked the FCC to permit the non-Bell operating companies ("BOCs") be allowed to collocate facilities in BOC central offices and provide a link between Bell's user network and the long distance carriers. On June 6, 1991, the FCC released a Notice of Proposed Rulemaking and Notice of Inquiry in CC Docket 91-141

On September 17, 1992, the FCC mandated expanded interconnection (collocation) for interstate special access service. A company could be exempted from the mandate by a formal decision of a state legislature or public utility regulatory agency within a certain time. By mandating expanded interconnection, the FCC required LECs to open up their facilities to all interested parties. This permitted LEC competitors and high-volume users to terminate their own special access transmission facilities within a LEC's central office. Although LECs were required to offer physical collocation to all interconnectors, the parties remained free to negotiate virtual collocation arrangements.

In May, 1994, the MoPSC filed a proposed rule with the Missouri Secretary of State to set the terms and conditions under which telecommunications companies would allow interconnection with their networks. However, a federal court struck down the FCC's collocation rule, finding that it sanctioned a taking of property in violation of the Fifth Amendment, and that Congress had not expressly authorized such a practice. *Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994). The MoPSC withdrew its proposed rule at that time. In

the 1996 Act, Congress expressly authorized compulsory collocation. 47 U.S.C. § 251(c)(6). With this in mind, the MoPSC offers its 1994 proposed rule (attached), with minimal changes, for consideration as a collocation rule.

The Missouri rule establishes a standard for technically feasible points of interconnection, and establishes guidelines governing installation, maintenance and repair of an incumbent LEC's portion of interconnection facilities. The rule also requires the companies to provide a legitimate business purpose for not interconnecting as requested by the interconnector. The Missouri rule should be amended to include switched access.

VII. Arbitration

The MoPSC has experience arbitrating disputes between utilities, pursuant to the authority granted in § 386.230 RSMo (1994) dating back to the MoPSC's founding. *See* 1913 Mo. Laws 646 (Public Service Commission Act § 118). Pursuant to this authority, the MoPSC has, for example, determined the sale price of a water system:[7] resolved disputed water bills;[8] allocated liability between two railroads for a personal injury;[9] and established the amount of compensation

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[7] *In the matter of the Application for the Transfer and Sale by The Light, Power and Manufacturing Company of its interests in the Water system at Willow Springs, Missouri, to the City of Willow Springs*, 2 Mo.P.S.C. 31 (1914).

[8] *In the matter of the Complaint of Cammille E. DeWever vs. West St. Louis Water and Light Company*, 2 Mo.P.S.C. 38 (1914); *In the Matter of the Complaint of R.H. Bather vs. St. Louis County Gas Company*, 2 Mo.P.S.C. 204 (1915); *In the matter of the Joint Request by the City of Kirkwood, Missouri, and St. Louis County Water Company for Arbitration of Dispute and for Hearing*, Case No. WO-95-171, slip op. (1995).

[9] *In the Matter of the Application for Arbitration by the St. Joseph & Grand Island Railway Company and Quincy, Omaha & Kansas Railroad Company of Matter of Differences Over Payment of Personal Injury Claim of Edith Schoonover*, 5 Mo.P.S.C. 192 (1917).

that an electric utility owed to a telephone utility when the electric field from the electric utility's lines caused static on the telephone company's lines.[10] The MoPSC can arbitrate disputes between telecommunications companies without the imposition of federal guidelines.

VIII. Good Faith

At ¶ 47 of the NPRM, the FCC asks whether it should establish national guidelines regarding good faith negotiations under 47 U.S.C. § 251(c)(1), and if so, what those guidelines should be. Section 251(c)(1) requires incumbent LECs to open their networks to interconnection with other parties, and "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties" of LECs (§ 251(b)) and incumbent LECs (§ 251(c)). If the parties cannot reach agreement, then they may submit to arbitration by a state commission. 47 U.S.C. § 252(b). The party's failure to "participate further in the negotiations, to cooperate with the state commission in carrying out its function as arbitrator, or to continue to negotiate in good faith in the presence of, or with the assistance of, the state commission shall be considered a failure to negotiate in good faith." 47 U.S.C. § 252(b)(5).

While good faith is "an intangible and abstract quality with no technical meaning,"[11] courts in Missouri and elsewhere distinguish between subjective and objective good faith. Subjective good faith is a passive concept, referring merely to a person's "subjectively pure state of mind." *Kansas City Power & Light Co. v. Ford Motor Credit Co.*, 995 F.2d 1422, 1430-31

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[10] *In the matter of the Complaint of the Meissner Telephone Company vs. Union Electric Light and Power Company*, 7 Mo.P.S.C. 272 (1919).

[11] BLACK'S LAW DICTIONARY 693 (6th ed. 1990).

(8th Cir. 1993). In contrast, objective good faith refers to an affirmative duty to make "an honest effort to ascertain the facts and to make a determination based on such ascertained facts." *Stix Friedman & Co. v. Fidelity & Deposit Co. of Maryland*, 563 S.W.2d 517, 521 (Mo.Ct.App. 1987). One acting in objective good faith may not proceed upon a belief that is "bereft of rational basis nor amount[s] to an open abuse of [the party's] discretionary power." *Rigby v. Boatman's Bank and Trust Co.*, 713 S.W.2d 517, 533 (Mo.Ct.App. 1986). *See also American Home Assurance Co. v. Baltimore Gas & Elec. Co.*, 845 F.2d 48 (2d Cir. 1988); *Phillips v. Whittom*, 192 S.W.2d 856, 857 (Mo. 1946).

To the extent that the FCC establishes guidelines regarding good faith negotiations before state commissions, the FCC should require parties to act in good faith as measured by their objective conduct.

Respectfully submitted,

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4 CSR 150-2.125 Continuing Medical Education

PURPOSE: This amendment is to add a new section (8) detailing the continuing medical education hours required for physicians who hold a limited license, and renumber the remaining sections of the rule accordingly.

(8) A licensee who holds a limited license to practice medicine in the state of Missouri shall obtain and report to the board five (5) hours of AMA Category 1 or AOA Category 1A or 2A continuing medical education each calendar year. The obtaining and reporting of these hours shall be done in accordance with this rule.

Editor's Note: The remaining sections will be renumbered accordingly.

Auth: sections 334.075, RSMo (Supp. 1987) and 334.125, RSMo (Cum. Supp. 1993). Original rule filed Oct. 16, 1991, effective March 9, 1992. Emergency amendment filed Sept. 22, 1992, effective Oct. 2, 1992, expired Jan. 29, 1993. Emergency amendment filed Jan. 19, 1993, effective Jan. 29, 1993, expired May 28, 1993. Amended: Filed Oct. 2, 1992, effective May 6, 1993. Amended: Filed Oct. 4, 1993, effective April 9, 1994. Amended: Filed May 3, 1994.

STATE AGENCY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than $500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to these Proposed Amendments with the Department of Economic Development, Missouri Board of Healing Arts, Tina M. Steinman, Acting Executive Director, P.O. Box 4, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

PROPOSED RULE

4 CSR 150-2.155 Limited License

PURPOSE: This rule provides information to physicians and surgeons relative to the requirements for a limited license.

(1) The applicant shall make application for a limited license upon a form prepared by the board.

(2) No application will be considered by the board unless fully completed and properly attested by the board.

(3) If the applicant did not previously hold a permanent license to practice in the state of Missouri, then the applicant shall present evidence of meeting the board's requirements for permanent licensure as required by Chapter 334, RSMo and the board's rules.

Auth: section 334.112, RSMo (Cum. Supp. 1993). Original rule filed May 3, 1994.

STATE AGENCY COST: This Proposed Rule will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Rule will not cost private entities more than $500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this Proposed Rule with the Department of Economic Development, Missouri Board of Healing Arts, Tina M. Steinman, Acting Executive Director, P.O. Box 4, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists

PROPOSED AMENDMENT

4 CSR 150-3.030 Examination

PURPOSE: The purpose of this amendment is to amend sections (3) and (4) to adequately reflect the dates the physical therapy examination is administered and to change the passing score for the examination.

(3) The board shall conduct examinations of applicants for a license to practice as a professional physical therapist *[s twice]* **three times** each year. The first examination shall be in *[February]* **March** on a date the board shall determine. The second examination shall be in July on *[the]* **a date the board** shall determine. **The third examination shall be in November on a date the board shall determine.**

(4) To receive a passing score on the examination, the applicant must achieve *[a one and five-tenths (1.5) standard deviation of the raw scores]* **the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy. This passing point will be set equal to a scaled score of 600 based on a scale of 200 to 800.** Scores from a portion of an examination taken at one (1) test administration may not be averaged with scores from any other portion of the examination taken at another test administration to achieve a passing score.

Auth: section 334.125, RSMo (Cum. Supp. 1993). Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed March 13, 1985, effective May 25, 1985. Amended: Filed July 3, 1989, effective Dec. 1, 1989. Amended: Filed June 4, 1991, effective Oct. 31, 1991. Amended: Filed May 3, 1994.

STATE AGENCY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than $500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this Proposed Amendment with the Economic Development, Missouri Board of Healing Arts, Tina M. Steinman, Acting Executive Director, P.O. Box 4, Jefferson City, MO 65102, (314) 751-0144. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240— Public Service Commission
Chapter 32—Telecommunications Services

PROPOSED AMENDMENTS

4 CSR 240-32.020 Definitions. The commission is adding sections (23), (26), (37) and (42).

PURPOSE: This amendment defines terms necessary for the implementation and interpretation of another Proposed Amendment.

(23) Interconnector—a certificated telecommunications company that connects its transmission facilities to another company's telecommunications facility pursuant to 4 CSR 240-32.090(2).

Editor's Note: The following sections will be renumbered accordingly.

(27) Local calling scope—the geographic area consisting of an exchange or group of exchanges within and among which customers may ubiquitously call without incurring toll charges.

Editor's Note: The following sections will be renumbered accordingly.

[36] **(38)** Private line— *[a channel provided to furnish telecommunications only between the two (2) or more telephones or other terminal devisces directly connected to it and not having connection with either central officer or PBX switching apparatus.]* **communication path that is continuously dedicated to the exclusive use of the subscriber throughout the entire subscription period.**

Editor's Note: The following sections will be renumbered accordingly.

(43) Switched—a telecommunications function that enables a calling party to establish and keep open a communication path terminating at a different location, which path is dedicated for not longer than the duration of the communication.

Editor's Note: The following sections will be renumbered accordingly.

Auth: sections 386.040, RSMo (1986), 386.250, RSMo (Cum. Supp. 1993), 386.310, RSMo (Cum. Supp. 1989) and 392.200, RSMo (Supp. 1988). Original rule filed Dec. 11, 1975, effective Dec. 23, 1975. Amended: Filed Aug. 13, 1984, effective Nov. 15, 1984. Amended: Filed April 27, 1994.

STATE AGENCY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than $500 in the aggregate. Any costs to the local exchange companies are to be recovered in the rates charged for the services.

NOTICE TO SUBMIT COMMENTS: See notice following the last Proposed Amendment in this Chapter.

4 CSR 240-32.090 Connection of Equipment to the Telephone Network. The commission is adding sections (2) and (3).

Purpose: This amendment sets the terms and conditions under which telecommunications companies allow interconnection with their networks.

(2) The following shall govern the manner in which a telecommunications company providing basic local telecommunications service provides interconnection with its facilities for the purpose of an interconnector's provision of, or access to, special access and private line services:

(A) Upon the request of an interconnector, a company shall provide interconnection to the company facilities. For each type of interconnection, a company shall provide entrance to its facilities at the underground enclosure nearest the central office, or at a location mutually agreeable to the company and the interconnector. The company shall pull the length of fiber optic cable supplied by the interconnector through the cable vault and into the facility for connection to either the interconnector's or the company's equipment. The company shall not permit the interconnector to have access to the cable vault and the company shall maintain the entire portion of the interconnector's line to which the interconnector does not have access. Interconnection shall be provided in one (1) of the following ways:

1. Physical collocation, in which the interconnector's transmission equipment is located within the company's central office. The company shall provide the interconnector an avenue of ingress to and egress from that equipment and the company shall segregate its own equipment in an area to which only company personnel have access; or

2. Virtual collocation, in which the company purchases the equipment specified by the interconnector, locates the equipment within the central office and dedicates it to the use of the interconnector. The equipment shall be owned and maintained by the company. The company shall not permit the interconnector access to the central office, but shall allow the interconnector to monitor and control remotely the equipment dedicated to it;

(B) A company shall provide the type of interconnection requested by the interconnector, unless the company has a legitimate business purpose for not doing so;

(C) An agreement to interconnect and an interconnection are not transferable to other potential interconnectors, except for *bona fide* successors in interest to the interconnector's business, unless a transfer is mutually agreeable to the parties;

(D) A company shall not be required to expend any resources for planning or construction of facilities to accommodate interconnection without a then-pending request for interconnection at a given site;

(E) Within ten (10) days of the effective date of this rule, each company with one hundred thousand (100,000) or more access lines shall file a proposed tariff for the provision of interconnection that sets forth the terms and conditions for each kind of interconnection and sets forth the manner in which rates and charges will be calculated. The tariff shall provide for a contract term of five (5) years unless the parties agree otherwise, and will provide for reasonable notice to be given if the contract is not to be renewed. The tariff shall provide that the rates and charges for interconnection shall be determined on a customer-specific basis and shall provide for full recovery from the interconnector of all costs reasonably incurred for the purposes of interconnection;

(F) Any contribution element in an interconnection charge shall not exceed the amount of revenue net of cost that the company receives on average from selling its own special access service;

(G) Each company shall require an interconnector to pay a deposit at the time it requests interconnection, in accordance with the provisions of the company's tariff. If the company does not have an approved interconnection tariff on file at the time interconnection is requested, then no deposit will be required until the tariff is approved. A company's tariff shall require a minimum non-refundable deposit of five thousand dollars ($5000), which shall be made with any request for interconnection or upon approval of the tariff, whichever is later. This deposit, and any additional deposit provided under the tariff, shall be used to cover the costs incurred in gathering the information necessary to propose specific interconnection at specific rates to the interconnector and, if applicable, provide this interconnection. These costs may include, but are not limited to, the costs incurred in providing a price

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quotation, design, engineering, construction and remodeling costs and costs incurred for training operations and maintenance personnel. Consistent with its tariff, the company may require the interconnector to deposit additional amounts, as needed, to pay for nonrecurring costs incurred on behalf of the interconnector. Any portion of the deposit not used for nonrecurring costs shall be applied to recurring charges;

(H) Where provided, interconnection must be provided on a nondiscriminatory, first-come, first-served basis; and

(I) The company and the interconnector shall remain free to negotiate interconnection agreements other than those specified here, provided these arrangements are consistent with the terms of subsections (2)(C) through (H) of this rule.

(3) A telecommunications company other than a company that provides basic local telecommunications service, that receives a *bona fide* request for interconnection shall file, within ninety (90) days of that request, tariffs as described in this rule and shall offer interconnection in compliance with all other sections of this rule within one hundred fifty (150) days of the request.

Auth: sections 386.040, RSMo (1986), 386.250, RSMo (Cum. Supp. 1993), 386.310, RSMo (Cum. Supp. 1993) and 392.200, RSMo (Supp. 1988). Original rule filed July 13, 1978, effective Jan. 13, 1979. Amended: Filed April 27, 1994.

STATE AGENCY COST: This Proposed Amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE ENTITY COST: This Proposed Amendment will not cost private entities more than $500 in the aggregate. Any costs to the local exchange companies are to be recovered in the rates charged for the services.

NOTICE OF HEARING AND TO SUBMIT COMMENTS: Anyone may file initial comments in support or in opposition to this Proposed Amendment, with the Missouri Public Service Commission, David L. Rauch, Executive Secretary, P.O. Box 360, Jefferson City, MO 65102. To be considered, the initial comments shall be filed by June 20, 1994. Anyone may file reply comments in response to the initial comments filed. Reply comments shall be filed by July 6, 1994. Comments should refer to docket number TX-94-333 and an original and 14 copies must be filed. A public hearing is scheduled for July 15, 1994 at 9:00 a.m. in Room 530 of the Truman State Office Building for interested persons to appear and respond to commissioner questions. If any person has special needs as addressed by the Americans With Disabilities Act, please contact the Missouri Public Service Commission at least ten days prior to the hearing at one of the following numbers: Consumer Services' Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 80—Urban and Teacher Education
Chapter 800—Teacher Certification

PROPOSED AMENDMENT

5 CSR 80-800.010 Certification Standards for Teachers in Missouri Public Schools. The State Board of Education proposes to amend sections (1)—(7) and (9).

PURPOSE: This amendment shall incorporate the May 1993 Professional Certification Classifications I, II and Continuous Professional Certificate and also include the September 1, 1995, Gifted Education certificate requirements, September 1, 1996, Mild/Moderate Disabilities certificate with endorsements in Behavioral Disordered; Cross-Categorical, Learning Disabled, Mentally Handicapped; and Physical and Other Health Impairments grade levels K—12 and the September 1, 1997, grade levels PK—3, 1—6, 5—9, PK—12, PK, PK—9 and 9—12 with licenses in the areas of Early Childhood Education, Elementary Education, Middle School Education, Blind and Partially Sighted, Deaf and Hearing Impaired, Early Childhood Special Education, Mild/Moderate Disabilities, Severely Developmentally Disabled, Special Reading, Speech and Language Specialist, Agricultural Education, Allied Arts, Art, Business Education except Shorthand, Business Education with Shorthand, Driver Education, English, English for Speakers of Other Languages, French, German, Hebrew, Italian, Latin, Russian, Spanish, Gifted Education, Health, Home Economics Education, Industrial Technology, Journalism, Library Media Specialist, Mathematics, Music Education, Physical Education, Speech and Theater, Social Science, Unified Science, Vocational Home Economics, Counselor, Advanced Counselor, Postsecondary Vocational Counselor, School Psychological Examiner, School Psychologist, Principal, Special Education Director, and Superintendent.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Standards for certification require each applicant to provide satisfactory evidence of good moral character and to meet academic or experience requirements, or both, for the certificate requested. Certificates of license to teach are issued by the State Board of Education in both general and specialized areas as follows:

(A) Early childhood, prekindergarten through grade three (3);

(B) Elementary, grades one through *[six]* **eight** *[(1-6)]* (1—8);

(C) Middle school, grades *[five through nine (5-9)]* **four through eight (4—8);**

(D) Secondary education, including agriculture; **allied arts;** art; **biology;** business education; **chemistry;** driver education; **earth science; English;** English for speakers of other languages; foreign language; **general science;** health; home economics; industrial arts; *[library media specialist]* **instructional media technologist; journalism; learning resource director; librarian;** mathematics; music; physical education; **physics;** social studies; *[and unified science with endorsements in: biology, chemistry, earth science and physics]* **speech and theater; vocational agriculture; and vocational home economics;**

(E) Special education, including blind and partially sighted; deaf and hearing impaired; early childhood special education; *[mild/moderate disabilities;]* **behaviorally disordered; learning disabled; mentally handicapped; orthopedically and/or health impaired students;** reading specialist; severely developmentally disabled; speech and language specialist and gifted education;

(I) Vocational education *[including trades and industries, consumer homemaking, occupational home economics, health occupations, marketing education, business education, agriculture education, manpower training and disadvantaged/handicapped]*;

(J) Substitute teaching, including both forty-five (45)- and ninety (90)-day certificates for teachers teaching on a substitute basis; *[and]*

(L) **In addition to previously adopted licenses, the State Board of Education**